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RUTH A. BOSEK

May 27, 1997

Minerals Management Service
Royalty Management Program
Rules and Procedures Staff
Building 85
Denver Federal Center
Denver, CO 80225

Attn: David S. Guzy, Chief
Rules and Procedures Staff

Re: Notice of Proposed Rulemaking: Establishing Oil Value for Royalty Due on Federal Leases, and on Sale of Federal Royalty Oil, 62 F.R. 3742-01

Dear Mr. Guzy:

Enclosed for filing are the Comments of Chevron Pipe Line Company on Proposed Rules in the above-referenced Notice of Proposed Rulemaking.

I would appreciate it if your staff could mark the enclosed copy of the Comments "filed" and return the copy to me in the enclosed stamped, self-addressed envelope.

Please call me if there are any questions regarding these Comments.

Sincerely,

Ruth A. Bosek

Ruth A. Bosek
Counsel for Chevron Pipe Line Company

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Notice of Proposed Rulemaking:	)	
Establishing Oil Value for Royalty Due on	)	62 F.R. 3742-01
Federal Leases, and on Sale of Federal	)	
Royalty Oil	)	

COMMENTS OF CHEVRON PIPE LINE COMPANY ON PROPOSED RULES

Chevron Pipe Line Company ("CPL") hereby submits its comments on the rules proposed in the Notice of Proposed Rulemaking on Establishing Oil Value for Royalty Due on Federal Leases, and on Sale of Federal Royalty Oil, published in the Federal Register on January 24, 1997 at 62 F.R. 3742-01 ("NOPR"). CPL's comments are directed primarily to the Mineral Management Service's ("MMS") proposal to amend 30 C.F.R. § 206.105 by removing current paragraph (b)(5). This proposed amendment would eliminate the use of tariffs filed with the Federal Energy Regulatory Commission ("FERC") or State regulatory agencies as a basis for transportation allowances for oil transported under non-arms' length contracts. CPL opposes the removal of paragraph (b)(5) from Section 206.105.

I. CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications with regard to these Comments should be addressed to:

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II. NATURE OF CPL'S INTEREST

CPL is a wholly-owned subsidiary of Chevron Corporation. CPL owns and operates pipelines engaged in the regulated interstate and intrastate transportation of crude oil, refined products and natural gas. Among those are pipelines which transport crude oil produced in the Outer Continental Shelf ("OCS"), both to other pipelines in the OCS and to facilities onshore. In addition, CPL is a partner in the Point Arguello Pipeline Company ("PAPCO"), which transports crude oil from the OCS, offshore Santa Barbara, California to onshore. PAPCO is owned by 10 partners and CPL operates the pipeline for the partnership. PAPCO also has a tariff on file with the FERC.

One of CPL's affiliates is Chevron U.S.A. Production Company ("Chevron Production"), which is an OCS lessee. It is also a wholly-owned subsidiary of Chevron Corporation. Thus, CPL and Chevron Production are under common ownership and any contracts between them, including CPL's tariffs, are not considered arm's length contracts under MMS regulations.[1/]

Chevron Production is a shipper on various of CPL's pipelines. CPL charges Chevron Production, and Chevron Production pays to CPL, CPL's published tariff rates for all movements over CPL's pipelines for which FERC or State tariff rates are on file. If MMS removes paragraph (b)(5) from Section 206.105 as proposed, Chevron Production will not be able to utilize the tariff

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1/ This is despite the fact that CPL conducts its common carrier operations independently of either Chevron Corporation or Chevron Production. CPL is separately incorporated and has its own directors and officers, including its own President and General Counsel. CPL alone holds title to its common carrier assets. CPL's business decisions are made solely by its Board of Directors, its principal officers and its managers. CPL's Board of Directors, officers and managers do not take any orders or direction from Chevron Corporation or any of its subsidiaries in performing CPL's common carrier regulatory responsibilities. Those common carrier responsibilities include the setting of tariffs for CPL's pipelines, which must be approved by CPL's Board of Directors.

rates it pays CPL as its transportation allowance for royalty valuation purposes. CPL would have to provide detailed cost information, either to Chevron Production or to MMS, to allow the calculation of Chevron Production's transportation allowance according to MMS' regulations for non-arms' length contracts. This would impose a significant burden on CPL, as discussed in more detail below.

II. MMS' PROPOSAL IS BASED ON A FLAWED INTERPRETATION OF FERC ORDERS AND IS PREMATURE

MMS regulations provide two different standards governing whether an OCS lessee may deduct tariff rates it pays for pipeline transportation as a transportation allowance. If the lessee and the pipeline are not affiliated, the lessee may utilize the tariff rates without seeking or obtaining any MMS approval. If the lessee and the pipeline are affiliated (or if the lessee owns the pipeline), MMS may, under Section 206.105(b)(5), authorize a lessee to utilize the rates in a tariff approved by the FERC or a State regulatory agency as the lessee's transportation allowance. The practical effect of removing Section 206.105(b)(5), therefore, would be to require lessees to provide cost justification for shipments on their affiliates' pipelines while other lessees shipping on the same pipelines and paying the same tariff rates would not have to submit cost justification. In addition, the lessee may not be able to claim the full tariff rate charged by the affiliated pipeline because of the differences in the manner in which costs are computed under MMS regulations and for setting FERC tariff rates.

MMS has proposed removing Section 206.105(b)(5) because, in two Orders issued in 1992, FERC stated that it does not have jurisdiction pursuant to the Interstate Commerce Act ("ICA") over pipelines that operate solely on or across the OCS. NOPR, 62 F.R. at 3746, citing Oxy Pipeline, Inc., 61 FERC ¶ 61,051 (1992) ("Oxy"), and Bonito Pipe Line Co., 61 FERC ¶ 61,050 (1992) ("Bonito"). The NOPR's rationale overlooks the fact that FERC's disclaimer of jurisdiction was limited and, even if correct, does not justify eliminating a lessee's ability to rely upon its affiliate's filed tariff rates in all circumstances.

The FERC's disclaimer of jurisdiction was limited in that FERC did not disavow jurisdiction under the ICA over all oil pipelines that transport oil on the OCS. In both Oxy and Bonito, FERC stated that "[a] pipeline that starts on the OCS and transports oil through the seaward boundaries of the State to shore for further movement in interstate commerce is jurisdictional under the ICA." Bonito, 61 FERC at 61,221 n.22, and Oxy, 61 FERC at 61,228 n.14. Thus, even under the view of its ICA jurisdiction expressed in Oxy and Bonito, FERC has the authority--and the responsibility--to enforce the ICA for certain movements on pipelines that transport oil on the OCS.

The MMS itself has recognized that reading FERC's Oxy and Bonito Orders as disclaimers of ICA jurisdiction over all pipeline transportation of oil on the OCS is incorrect. In an Order dated less than one week before the NOPR was published, MMS' Associate Director for Policy and Management Improvement stated as follows:

> ....MMS believes that enough information is available to infer that FERC would determine that there was no ICA jurisdiction for the transportation of oil on or across the OCS. I disagree. Although FERC has already made a generic jurisdictional determination in Oxy for all pipelines that transport production solely on or across the OCS, that determination cannot be expanded to serve as a jurisdictional determination for all OCS pipelines under all circumstances.

Torch Operating Co., Docket Nos. MMS-94-0655-OCS, et al., "Leases Located Offshore on the Outer Continental Shelf; Transportation Allowance Exceptions; Federal Energy Regulatory Commission Tariffs" (Jan. 18, 1997), at 5 ("January 18 Order"). The January 18 Order resulted from numerous OCS lessees' appeals from orders denying requests to calculate their transportation allowances using FERC tariffs.[2] The January 18 Order remanded the lower MMS orders and directed MMS to petition the FERC for consideration of whether each pipeline is jurisdictional under the ICA. The NOPR's proposal to eliminate Section 206.105(b)(5) appears to be based on the same flawed interpretation of Oxy and Bonito that the January 18 Order rejected.

All crude oil produced in the OCS is transported onshore, but FERC decided in Oxy and Bonito that transportation onshore to the adjacent state is not sufficient by itself to trigger ICA jurisdiction. At the same time, FERC acknowledged that if the oil moved further in interstate commerce, i.e., was transported to another state, the OCS pipeline is jurisdictional with respect to the interstate movements. Bonito, 61 FERC at 61,221 n.22, and Oxy, 61,228 n.14. In fact, in 1984, the FERC asserted jurisdiction under the ICA over an OCS pipelines, the South Timbalier System, extending from the OCS, offshore Louisiana, to Pass Fourchon in Louisiana. South Timbalier Pipeline System, 29 FERC ¶ 61,345 (1984).[3] The FERC found that operation of South Timbalier from 1969 to 1979 without tariffs on file was a violation of Section 6 of the ICA. 29 FERC at 61,727. The FERC's action in South Timbalier, which included imposing a four million dollar fine, cannot be reconciled with an interpretation of Oxy and Bonito that would completely disavow ICA jurisdiction with respect to all OCS pipelines under all circumstances.

Moreover, FERC's disclaimer of ICA jurisdiction over an OCS pipeline solely on the basis that the pipeline does not physically exit the OCS is inconsistent with long-established precedent

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2/ CPL's affiliate, Chevron Production, was one of those lessees.

3/ At Pass Fourchon, the South Timbalier System connected with another pipeline system, through which crude could move either to another location within Louisiana or to Chevron Production's refinery in Pascagoula, Mississippi.

interpreting the ICA. The test of whether a carrier is engaged in interstate transportation subject to the ICA is not merely whether the carrier's facilities cross state or national boundaries but whether that carrier transports goods that are moving in interstate commerce--it is the movement of goods in interstate commerce that is subject to the ICA and consequently makes certain activities of the carrier subject to the ICA. Thus, movements on an oil pipeline located wholly within one state may be subject to the ICA if the oil either has already moved in interstate commerce or is beginning a movement in interstate commerce.[4/] The pipeline is then subject to regulation by the FERC under the ICA with respect to the movements in interstate commerce, regardless of the fact that the pipeline does not physically cross state boundaries.[5/] If a pipeline that physically begins and ends on the OCS transports oil that moves onshore and to another state through one or more connecting pipelines without the interstate movement being broken, that pipeline should be subject to the FERC'S jurisdiction under the ICA to the same extent that a pipeline located wholly within one state is if it moves oil that eventually crosses state lines without the interstate transportation being broken.

CPL assumes that MMS will shortly petition the FERC for jurisdictional determinations as directed by the January 18 Order. The issue of whether FERC correctly interpreted its jurisdiction

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4/ See, e.g., Hunt Refining Co. and East Mississippi Pipeline Co., 70 FERC ¶ 61,035 (1995) and Interstate Energy Co., 32 FERC ¶ 61,294 (1985) (The fact that pipeline movements all take place entirely within one state is not determinative of their intrastate character, if, in fact those movements are simply a link in an interstate chain of movements).

5/ An oil pipeline may make both interstate and intrastate movements through the same physical pipe between the same origin and destination points. Amoco Pipeline Company, 62 FERC ¶ 61,119, 61,803 (1993) (Transportation of crude produced outside of Wyoming over Amoco's pipelines in Wyoming to a refinery in Wyoming was in interstate commerce and subject to FERC tariffs, while transportation by Amoco within Wyoming of crude both produced and refined in Wyoming was in intrastate commerce and subject to State regulation. The commingling of interstate and intrastate oil in transportation does not change the nature of a movement as either interstate or intrastate).

over OCS pipelines in Oxy and Bonito, i.e., that movement from the OCS to the adjacent state alone is not in interstate commerce, may be raised in that proceeding. In this regard, it is important to note that FERC's interpretation of its ICA jurisdiction over OCS pipelines as expressed in Oxy and Bonito has not been upheld by any court on review.[6] CPL submits that it is therefore premature for MMS to amend its regulations eliminating a lessee's ability to rely upon its affiliate's FERC tariffs until MMS files the petition as directed and the jurisdictional question is finally resolved.

III. DELETION OF SECTION 206.105(b)(5) WILL IMPOSE A SIGNIFICANT BURDEN ON BOTH CPL AND THE MMS

CPL's objection to deleting Section 206.105(b)(5) is prompted by the substantial burden that will be imposed on CPL if Chevron Production cannot rely upon CPL's tariff rates as its transportation allowances for movements on CPL's pipelines. Under the MMS regulations and in theory, Chevron Production would have to provide the transportation allowance cost information specified in the MMS regulations, at 30 C.F.R. § 206.105(b)(2). In actuality, CPL would have to supply that information, because CPL owns and operates the pipeline systems and only CPL has the information specified in the regulations. CPL also submits that deletion of Section 206.105(b)(5) would create a significant--and unnecessary--burden for MMS as well.

The MMS regulations provide that the lessee's transportation allowance shall be based on its actual costs during the reporting period and detail what may be included in the actual costs. Compiling the information in a manner responsive to the MMS regulations would mean substantial

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[6] The FERC's Bonito Order was appealed to the Court of Appeals for the District of Columbia Circuit, while the Oxy Order was not appealed. The Court of Appeals, however, dismissed the portion of the appeal pertaining to the issue of ICA jurisdiction "without reaching the merits of the Commission's decision that it lacks jurisdiction under the ICA." Shell Oil Co. v. Federal Energy Regulatory Commission, 47 F.3d 1186, 1190 (D.C. Cir. 1995).

additional work for CPL. The MMS regulations do not track the manner in which CPL is required to maintain records under the Uniform System of Accounts for Oil Pipelines established by the FERC. See 18 C.F.R. Part 352. Nor do the MMS regulations calculate a pipeline's costs in the same manner as the FERC does in determining if a pipeline's rates are just and reasonable under the ICA. For example, FERC includes Federal and State income taxes in computing a pipeline's costs, while the MMS regulations exclude those taxes from the costs upon which a transportation allowance can be based. Thus, complying with the MMS regulations in order to provide Chevron Production's transportation allowances would require CPL to generate new and different financial analyses and records than those it keeps in the ordinary course of business.

Even after the costs of a system are computed in accordance with MMS regulations, there remains the problem of determining what portion of those costs represent Chevron Production's transportation cost. While the MMS regulations state that the lessee's deduction for transportation costs is to be determined on the basis of the cost of transporting on each individual system, CPL cannot automatically provide the total costs of each OCS system as Chevron Production's transportation allowance. First, Chevron Production may not ship on the entire system and the system costs would presumably have to be allocated to the segments on which Chevron Production does ship. Second, Chevron Production may not be the only shipper on any given system (or segment of a system) and the cost of the system (or segment) would have to be allocated among the shippers to arrive at Chevron Production's appropriate share under the MMS regulations. The issue of how costs should be fairly allocated among segments or shippers is not necessarily straightforward and, in rate cases at the FERC, is often highly contentious. If the MMS disagrees with CPL's allocation methodology, an additional layer of complexity--and burden--is added.

The burden that would be imposed on CPL is demonstrated by the number of OCS tariff rates that CPL has on file with the FERC. Including the PAPCO tariff, CPL has approximately four dozen different rates for movements originating on the OCS. These rates cover over 50 separate movements from nearly four dozen origins to approximately 30 different destinations. Assuming, arguendo, that Chevron Production ships under virtually all of these tariff rates,[7] CPL would have to compile cost data for all these various movements in accordance with the MMS regulations and allocate the costs to determine the cost assignable to Chevron Production. CPL estimates that this would require an initial effort of at least five person weeks. If the MMS (or Chevron Production) questions or disputes either the cost data or the allocation methodology, the burden on CPL will increase significantly.

The ICA itself may pose problems for CPL providing the cost information necessary to compute Chevron Production's transportation allowance. Section 15(13) of the ICA makes it unlawful for a common carrier to disclose "any information concerning the nature, kind, quantity, destination, consignee, or routing of property...which information may be used to the detriment or prejudice" of the shipper. Violation of Section 15(13) is a misdemeanor and carries a fine of $1,000. This presents potential difficulties for CPL providing the data needed to substantiate Chevron Production's transportation allowance because Chevron Production may not be the only shipper on a pipeline. CPL would have to carefully consider the information being sought based on the operation of each pipeline system in order to be certain that it was not inadvertently violating Section 15(13) of the ICA by disclosing information about other shippers on the pipelines.

7/ Section 15(13) of the ICA prohibits CPL from publicly disclosing those tariff rates under which Chevron Production ships.

In addition to burdening CPL and other OCS pipelines, the need to supply costs rather than relying on filed tariff rates would also burden MMS. At a minimum, MMS would have to review the cost information upon which the transportation allowance was based. Under a worst case scenario, MMS might be put in the position of conducting evaluations of that cost data equivalent to the oil pipeline rate cases that the FERC now conducts. More often than not, such reviews are extremely lengthy and expensive for the parties involved and consume significant FERC staff resources.

IV. PUBLICATION OF INTERIM FINAL RULE

MMS has proposed publishing an Interim Final Rule, stating that this would allow MMS to revise the rules after the first year without a new rulemaking. NOPR, 62 F.R. at 3743. It is unclear how such an approach would be implemented or what aspects of the rules would be subject to change in a year without a new rulemaking. If MMS retains paragraph (b)(5) of Section 206.105, as CPL advocates, CPL would oppose any mechanism that would allow MMS to delete or modify this paragraph without a new rulemaking. As these Comments indicate, deletion of paragraph (b)(5) would have a significant impact on CPL and it is important that CPL retain the opportunity to comment on any future modification to that paragraph.

V. CONCLUSION

CPL opposes the deletion of paragraph (b)(5) from Section 206.105 because it is based upon a misinterpretation of Orders issued by the Federal Energy Regulatory Commission, is premature in light of the Order issued by MMS on January 18, 1997 in Docket Nos. MMS-94-0655-OCS, et al., and could create a significant and unnecessary burden on both MMS and OCS pipelines, including

CPL. For these reasons, Chevron Pipe Line Company respectfully requests that the Minerals Management Service retain paragraph (b)(5) of 30 C.F.R. § 206.105.

Respectfully submitted,

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Dated: May 27, 1997